

**THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

DOCKET NOS. 2017-207-E, 2017-305-E, AND 2017-370-E

IN RE: Friends of the Earth and Sierra Club,)
Complainant/Petitioner vs. South)
Carolina Electric & Gas Company,)
Defendant/Respondent)

IN RE: Request of the South Carolina Office of)
Regulatory Staff for Rate Relief to)
SCE&G Rates Pursuant to S.C. Code)
Ann. § 58-27-920)

IN RE: Joint Application and Petition of South)
Carolina Electric & Gas Company and)
Dominion Energy, Incorporated for)
Review and Approval of a Proposed)
Business Combination between)
SCANA Corporation and Dominion)
Energy, Incorporated, as May Be)
Required, and for a Prudency)
Determination Regarding the)
Abandonment of the V.C. Summer)
Units 2 & 3 Project and Associated)
Customer Benefits and Cost Recovery)
Plans)

**SCE&G AND DOMINION
ENERGY'S OPPOSITION TO
SCCCL AND SACE'S
PETITION FOR
RECONSIDERATION OF
ORDER 2018-112-H**

South Carolina Electric & Gas Company ("SCE&G" or the "Company") and Dominion Energy, Inc. ("Dominion Energy") hereby respond in opposition to the Petition for Reconsideration of Order No. 2018-112-H ("Petition for Reconsideration") filed by the South Carolina Coastal Conservation League ("SCCCL") and the Southern Alliance for Clean Energy ("SACE") (together, the "Petitioners"). The Petitioners request the Public Service Commission of South Carolina ("Commission") to review and reconsider Order No. 2018-112-H in which the Hearing Officer denied SCCCL and SACE's Motion to Bifurcate the or, in the Alternative, to Sequence the Hearing ("Motion"). SCE&G and Dominion Energy submit that the Petitioners'

contentions are without merit and that the Petition for Reconsideration should be denied for the following reasons:

STANDARD OF REVIEW

The purpose of a petition for rehearing and reconsideration is to allow the Commission to identify and correct specific errors and omissions in its orders. Under the operative Commission regulation, 10 S.C. Code Ann. Reg. § 103-825 A(4):

A Petition for Rehearing or Reconsideration shall set forth clearly and concisely:

- (a) The factual and legal issues forming the basis for the petition;
- (b) The alleged error or errors in the Commission order;
- (c) The statutory provision or other authority upon which the petition is based.

A party cannot raise issues in a motion to reconsider that were not raised during the proceeding. *See Kiawah Prop. Owners Group v. Pub. Serv. Comm’n*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004); *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990); *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Further, “[t]he purpose of a Petition for Rehearing is not intended as a procedure for rearguing ... [a] case merely because the non-prevailing parties disagree with the original decision.” *In re BellSouth BSE, Inc.*, Docket No. 97-361-C, Order No. 98-66 at 1-2. Conclusory statements that amount to general and non-specific allegations of error also do not satisfy the requirements of the rule. *See In re S.C. Pipeline Co.*, Docket No. 2003-6-G, Order No. 2003-641 at 6 (“[A] conclusory statement based upon speculation and conjecture is no evidence at all and is legally insufficient to support a [petition for reconsideration].”). While the requirement of specificity in post-trial motions is interpreted with flexibility, at minimum the decision-making body “must be able to both comprehend the motion and deal with it fairly.” *See Camp v. Camp*, 386 S.C. 571, 575, 689 S.E.2d 634, 636 (2010).

ARGUMENT

SCCCL and SACE allege that the Commission should review or reconsider the Hearing Officer's decision in Order No. 2018-112-H for three reasons, which are set forth below. In each instance, SCCCL and SACE merely reassert and repeat the same claims made to the Commission in their original Motion and subsequent Reply in Support of Motion to Bifurcate or, in the Alternative, to Sequence the Hearing ("Reply") dated August 17, 2018. Because the Petitioners do not demonstrate any error in law or fact by the Hearing Officer in denying the Petition for Reconsideration and do not raise any issues of law or fact that were omitted from consideration or misconstrued, the Petition for Reconsideration should be denied.

I. Petitioners' Claims Regarding Ratification No. 285

In the Petition for Reconsideration, SCCCL and SACE first argue that the 2018 South Carolina Laws Joint Resolution Ratification No. 285 (S. 954, enacted July 2, 2018) ("Ratification No. 285") allows the Commission to bifurcate the above-captioned dockets or sequence the hearing to be held in these matters and to consider individual issues on a piecemeal basis. Specifically, Petitioners suggest that the Joint Petition in Docket No. 2017-370-E ("Joint Petition") requests 1) approval of cost recovery under the BLRA and 2) approval to adjust rates under S.C. Code Ann. § 58-27-870(F), which is not part of the BLRA. On this basis, SCCCL and SACE suggest that the Commission has been authorized by the South Carolina General Assembly to consider these two issues in separate proceedings.

However, these are the same arguments Petitioners advanced in both their Motion and Reply. *Compare* Motion at 7-9 and Reply at 4-5 *with* Petition for Reconsideration at 4-7. *See also, In re BellSouth BSE, Inc., supra.* As SCE&G and Dominion Energy noted in their Response in

Opposition to Motion to Bifurcate or, in the Alternative, to Sequence the Hearing (“Response”)¹ dated August 10, 2018, the Joint Petition expressly involves requests made by SCE&G and Dominion Energy pursuant to the Base Load Review Act (“BLRA”). Ratification No. 285 therefore requires the Commission to issue an order on this docket no later than December 21, 2018. SCE&G and Dominion Energy also noted that 2018 South Carolina Laws Act No. 258 (“Act No. 258”) bars the Commission from “consider[ing] any requests made pursuant to Article 4, Chapter 33, Title 58 other than in a docket currently pending before the commission.” Accordingly, Act No. 258 specifically prohibits the opening of a new, separate docket to consider the proposed regulatory plans.

In rejecting SCCCL and SACE’s arguments on this issue, the Hearing Officer correctly concluded that “[c]learly, the benefits plan under the merger include proposals for rate mitigation for, *inter alia*, abandonment costs incurred by SCE&G” and, therefore, “the concepts of abandonment and merger are related and clearly constitute requests made pursuant to the [BLRA].” Order No. 2018-112-H at 3. The Hearing Officer further determined that “decisions on both issues must be made by December 21, 2018, and no delay is appropriate for the merger decision. Not only are these findings well-founded and consistent with the plain language of both Ratification No. 285 and Act No. 258, Petitioners have presented no new facts or arguments that demonstrate the Commission should review or reconsider the Hearing Officer’s ruling in this regard. Thus, the Petition for Reconsideration should be denied.

¹ Because the Petition for Reconsideration simply restates arguments previously advanced by SCCCL and SACE, SCE&G and Dominion Energy hereby incorporate herein by reference their Response, which directly addresses each of the issues presented by Petitioners.

II. Petitioners' Claims that Bifurcation would Simplify the Proceedings and Clarify the Issues

Petitioners also allege that bifurcating these proceedings somehow would simplify and streamline the proceedings and clarify the issues. In responding to these same allegations previously presented by SCCCL and SACE, *see* Motion at 4, 6,² SCE&G and Dominion Energy made clear that bifurcation would have the exact opposite effect, requiring “witnesses ... to be called to the stand twice, cross examined twice, questioned by the Commission twice, and redirected twice.” Response at 7. In addition, bifurcation or sequencing would create unnecessary and enormous complications and confusion for prefiled testimony, the scheduling and examination of witnesses, and evidentiary and other procedural rulings. On this basis, the Hearing Officer properly found that “the procedure proposed by [SCCCL] and [SACE] would be unwieldy, causing confusion and disruption in the hearing process.” Order No. 2018-112-H at 3. Petitioners fail to present any new arguments demonstrating that this determination by the Hearing Officer was improper or unlawful in any way and, thus, the Commission should deny their request for review or reconsideration of Order No. 2018-112-H.

III. Petitioners' Claims that their Motion was Timely

Finally, SCCCL and SACE assert that their Motion was timely even though it was filed more than six months after the Commission ordered the consolidation of the proceedings and found that “there are a number of common issues that must be considered in all three dockets.” Order No. 2018-80. Consistent with the arguments presented in their Reply, *see* Reply at 6-7, the Petitioners assert they “refrained from acting on the Commission’s [scheduling] Order until the General Assembly fully set forth the scope of its timing mandate.”

² *See also* Reply at 7-10.

In addition to being disingenuous, this argument ignores the fact that, from the time it was first filed, the Joint Petition has always included issues pertaining to the prudence of abandonment and the proposed regulatory solutions as well as the business combination with Dominion Energy. In fact, more than six months ago, SCCCL and SACE argued that the above-captioned dockets should be consolidated and made no mention of subsequently unconsolidating them as to their core issues. *See* Response at 5-6. More importantly, the Petitioners' failure to file a timely challenge to consolidation of these three dockets ordered in Commission Order No. 2018-80 issued on January 31, 2018, effectively bars granting the Petition for Reconsideration and forecloses jurisdiction of the Commission to now consider SCCCL and SACE's Motion or the Petition for Reconsideration. *See* S.C. Code Ann. § 58-27-2150 ("After an order or decision has been made by the Commission any party to the proceedings **may within ten days after service of notice of the entry of the order or decision** apply for a rehearing in respect to any matter determined in such proceedings ...") (emphasis added); 10 S.C. Code Ann. Regs. 103-854.B ("Except as otherwise provided by S. C. Code Ann. Section ... 58-27-2150 (1976), any party of record may, **within 20 days after the date of receipt of Order**, petition the Commission for rehearing or reconsideration.") (emphasis added). The Hearing Officer therefore properly denied the Motion, finding that "no objections were raised at the time of consolidation of the Dockets and establishment of the procedural schedule, and Dominion and SCE&G pre-filed testimony in reliance on that schedule." The Petitioners have presented nothing that demonstrates they are not bound by the above-quoted law. In short, the Petition for Reconsideration appears to be nothing more than a calculated effort to delay these proceedings, is barred as the underlying Motion is untimely, and, thus, should be summarily denied.

CONCLUSION

For the foregoing reasons and for the reasons set forth in SCE&G and Dominion Energy's Response, the Hearing Officer properly denied SCCCL and SACE's Motion to bifurcate these proceedings or to sequence the hearing in the above-captioned matter. Through their Petition for Reconsideration, SCCCL and SACE merely restate the same arguments set forth in their Motion and Reply, and do not identify any error in law or fact by the Hearing Officer. Moreover, the underlying Motion itself is untimely and therefore barred. Accordingly, the Petition for Reconsideration should be summarily denied.

Respectfully submitted,

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